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LAW APPLICABLE TO LIABILITY OF STOCKHOLDERS FOR DEBTS OF CORPORATIONS. — It is well established that stockholders of a corporation doing business in states allowing limited liability cannot escape individual liability if it is imposed by the law of the state in which the corporation is chartered. This rule is frequently stated by text writers in terms sufficiently broad to cover the cases in which the circumstances as to the laws of the two states are reversed.[1] The Supreme Court of the United States has held that the stockholders of a corporation formed in a state in which limited liability is permitted, for the purpose of transacting business in a state in which stockholders are individually liable, will, in the absence of a provision in the charter for limited liability, be taken to have contracted with reference to the laws of the state in which their corporation intends to act.[2] On the other hand, it has recently been decided by the King's Bench Division that the stockholders of an English limited company are not liable for debts contracted by the company in California, although the laws of that state hold each stockholder of a corporation transacting business within its territory to an individual liability for its debts there contracted. *Risdon Iron and Locomotive Works* v. *Furness*, 21 T. L. R. 179. The articles of incorporation provided that the company should be empowered to appoint an agent to do all such acts as might be necessary to comply with the law of any country where the corporation might carry on business.

This conflict of opinion squarely raises the question as to the law governing the liability of stockholders in a corporation doing business in several

[1] Beale, Foreign Corp. § 442; Thompson, Liability of Stockholders § 80; Wharton, Confl. of L. § 105 b.

[2] Pinney *v.* Nelson, 183 U. S. 144.

states. A personal obligation, which is the result of some act of the person bound, is created by the law of the place where that act is done,[3] whether it is done by the principal directly or through the medium of an agent. If, for example, a partnership is formed in one state and its agent contracts an obligation in another, the liability of the partners is governed by the law of the place in which the agent acts.[4] The existence of the relation of principal and agent, however, is to be determined by the law of the place where the transaction occurred from which the agency is alleged to have arisen. Thus, in the case of an attempt to fasten liability upon a special partner as a result of the acts of an agent of the partnership, it has been held that the law of the place of the partnership agreement must determine whether the partnership agent is empowered to bind the special partner.[5] It would seem to follow that the incidents of the relation of stockholder and corporation should be fixed by the law of the place where that relationship came into being, namely, the place where the corporation was created. Of course, it must be regarded as well settled that the agents of a corporation are not the agents of the stockholders.[6] That the maximum liability of an owner of stock is settled at the time of incorporation is shown by several decisions in which statutes imposing upon stockholders individual liabilities not imposed by the laws of their charters have been held unconstitutional as impairing the obligations of contracts.[7] Of course parties may in all cases introduce the provisions of a foreign law into their contract,[8] but it is believed that the mere fact that a corporation is intended to transact business abroad should not be sufficient to impose the statutory liability prescribed by the laws of a foreign state upon stockholders who incorporated under laws providing for a limited liability.

THE EQUITY OF MARSHALING. — Where one creditor may resort to two securities for the payment of his debt while another has a subsequent claim upon only one of them, the former will be compelled in equity, in so far as he may not be prejudiced, first to exhaust that security which the latter cannot reach. Thus if A has mortgages of Whiteacre and of Blackacre, and B has a second mortgage upon Blackacre only, B may in foreclosure proceedings require A to resort first to Whiteacre.[1] And if A in fact proceeds first against Blackacre, B may reach Whiteacre by subrogation.[2] In the United States the majority of the courts say that B has a fixed equitable right in Whiteacre, which, like ordinary equities, persists until the *res* gets to a *bona fide* purchaser, so that B may still marshal A against Whiteacre after it has been mortgaged to C with notice of the other mortgages.[3] The English courts deny that any equitable right arises until foreclosure proceedings are commenced. Accordingly, as between B and C, they pay A's mortgage ratably from Whiteacre and Blackacre.[4]

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[3] 3 Beale, Cas. Confl. of L. 515.
[4] Baldwin *v.* Gray, 4 Mart. N. S. (La.) 192.
[5] King *v.* Sarria, 69 N. Y. 24.
[6] 1 Morawetz, Priv. Corp. § 565. See Smith *v.* Hurd, 12 Met. (Mass.) 371.
[7] Ireland *v.* Palestine, etc., Turnpike Co., 19 Oh. St. 369.
[8] Jacobs *v.* Crédit Lyonnais, 12 Q. B. D. 589, *per* Bowen, L. J.

[1] Aldrich *v.* Cooper, 8 Ves. 382, 394.
[2] Gibson *v.* Seagrim, 20 Beav. 614.
[3] Robeson's Appeal, 117 Pa. St. 628.
[4] Barnes *v.* Racster, 1 Y. & C. C. C. 401.